



# Introduction

The cases presented in this second volume of *Landmark Constitutional Cases that Changed South Africa* represent watershed moments in the nation's constitutional jurisprudence, marking significant turning points in how fundamental rights are interpreted and applied within South Africa's democratic framework. Each case has profoundly shaped the legal landscape by establishing precedents that continue to reverberate through subsequent judgments, demonstrating the Constitutional Court's commitment to advancing substantive equality, human dignity and transformative constitutionalism. From the definitive pronouncements on corporal punishment in *S v Williams*, which recognised children's rights to dignity and freedom from violence, to the groundbreaking decision in *New Nation Movement* that transformed electoral participation by enabling independent candidates to stand for national elections, these judgments have systematically dismantled vestiges of discrimination and exclusion whilst establishing robust protections for vulnerable groups. Other key judgments like *Carmichele v Minister of Police*, which revolutionised state accountability for protecting citizens from foreseeable harm; *Hassam v Jacobs*, which advanced Muslim women's rights in polygynous marriages; and *South African Police Service v Solidarity obo Barnard*, which articulated nuanced principles for implementing affirmative action, collectively demonstrate the court's role in balancing competing constitutional imperatives whilst steadily advancing South Africa's democratic project.

These landmark cases illuminate the Constitutional Court's evolution over nearly three decades as it has navigated complex questions around language rights in education in *AfriForum v University of the Free State*, tax administration and access to courts in *Metcash Trading*, and unmarried fathers' rights in *Fraser v Children's Court*. What distinguishes these judgments is not merely their resolution of immediate legal questions but their articulation of broader constitutional principles that have subsequently been embraced, developed



and sometimes reconsidered by courts, the legislature and South African society. The judgments frequently demonstrate a remarkable judicial willingness to engage with indigenous values, South Africa's plural legal traditions and emerging international human rights standards whilst remaining grounded in the unique historical context of the nation's transition from apartheid to constitutional democracy. Through these cases, we witness the Constitutional Court's crucial role in reconciling tensions between individual rights and communal values, traditional practices and constitutional imperatives, and statutory provisions and constitutional guarantees – ultimately revealing a jurisprudence that is distinctively South African yet universally instructive in its approach to constitutional interpretation and its commitment to substantive justice.

Rather than merely identifying cases based on their popular recognition or frequency of citation, the selection process prioritised cases that sparked substantial shifts in legal principles, altered societal norms or expanded constitutional interpretations in novel ways. These cases were evaluated through multiple analytical lenses: their impact on broader society and individual rights, their novelty in breaking new legal ground, their clarity in providing guidance to lower courts, their persuasiveness in offering sound reasoning and lastly their longevity in remaining relevant despite the passage of time. We notably acknowledge that these criteria are not exhaustive and that determining landmark status ultimately involves a measure of subjective judgment, leaving space for disagreement about which cases might be considered most foundational to South African constitutional development.

It is worth emphasising that the cases explored throughout this volume are not necessarily the most prominent in public consciousness nor universally accepted as the most important constitutional cases. Rather, they represent judgments that have particular significance for legal science in South Africa, offering rich analytical material for understanding how constitutional principles have evolved and been applied in various contexts. The selection reflects a deliberate focus on cases that illuminate specific aspects of constitutional rights

## Introduction

interpretation, demonstrate the practical implementation of constitutional values or illustrate the tension between competing constitutional principles. By examining these cases in depth, the volume aims to provide insight into not only the substantive content of constitutional rights but also the methodological approaches employed by the courts in navigating complex constitutional questions, thereby contributing to the broader scholarly understanding of South African constitutional jurisprudence rather than simply reiterating the most commonly discussed cases.

Chapter 1 examines *S v Williams*, a watershed moment in South African constitutional jurisprudence regarding corporal punishment. This landmark case fundamentally transformed South Africa's approach to physical punishment by declaring juvenile whipping under section 294 of the Criminal Procedure Act unconstitutional, constituting cruel, inhuman and degrading treatment prohibited by the Interim Constitution. The judgment's significance lies in its meticulous exploration of the tension between punitive measures and human dignity which established crucial precedents regarding the interpretation of constitutional rights concerning children. By rejecting arguments that corporal punishment served as an effective deterrent or alternative to imprisonment, the court emphasised that a culture of authority legitimising violence contradicted the constitutional values that South Africa aspired to uphold. This judgment catalysed the "constitutionalisation of children's rights" in South Africa, leading to subsequent legislative developments including the abolition of corporal punishment in schools through the South African Schools Act and ultimately the invalidation of the common law defence of 'reasonable chastisement' for parents in *Freedom of Religion South Africa v Minister of Justice*. Beyond its immediate impact on corporal punishment, the case has influenced judicial considerations of children's best interests across various contexts including adoption, sentencing of caregivers, education rights and juvenile justice. By establishing that constitutional imperatives require more than mere abstention from coercion but also demand fairness and even-handedness in relation to diverse groups, *S v Williams* represented a decisive break with South Africa's

authoritarian past and established an enduring framework for protecting the dignity, equality and security of the nation's most vulnerable citizens.

*Carmichele v Minister of* fundamentally redefined the relationship between state accountability and citizen protection, establishing that state organs have a positive duty to prevent foreseeable harm to individuals, particularly in cases of gender-based violence. What makes *Carmichele* exceptional is how it revolutionised the development of the common law through the lens of constitutional values, requiring courts to infuse private law remedies with constitutional imperatives of dignity, equality and freedom. The judgment broke new ground by recognising that failing to protect women from gender-based violence constitutes a constitutional violation, describing it as “the single greatest threat to the self-determination of South African women.” By holding state officials accountable for their negligent omissions rather than just their actions, the court expanded delictual liability in a manner that was shared with South Africa's transformative constitutional project. The case's impact has been far-reaching, catalysing substantial reforms in the criminal justice system including enhanced bail procedures, strengthened victim-centric approaches and improved inter-departmental coordination. Perhaps most significantly, *Carmichele* exemplifies transformative constitutionalism in action by bridging the traditional divide between public and private law, ensuring that constitutional values permeate all aspects of legal reasoning. Its recognition that gender-based violence demands special protection from the state has influenced numerous subsequent cases, demonstrating how constitutional adjudication can respond to the lived realities of vulnerable groups while simultaneously advancing broader systemic change. Consequently, *Carmichele* stands as a cornerstone of South Africa's post-apartheid jurisprudence, reflecting the Constitution's commitment to substantive equality and human dignity.

The *Metcash Trading Ltd v Commissioner for South African Revenue Service* case stands as a key moment in South African fiscal jurisprudence, marking the first time that the

## Introduction

Constitutional Court addressed the constitutional validity of the “pay now, argue later” principle in tax administration. This landmark case fundamentally shaped the balance between efficient tax collection and taxpayer rights, establishing that while the South African Revenue Service must be empowered to fulfil its constitutional mandate of securing state revenue, such powers must operate within the framework of constitutional rights and values. The court’s careful contextual approach to interpreting fiscal legislation established important precedent for how tax provisions must be understood within their broader statutory ecosystem. Although critics have noted the court’s arguably narrow interpretation that privileged tax collection over taxpayer rights and its failure to adequately consider international comparisons or relevant legislation like the Use of Official Languages Act, the judgment’s enduring significance lies in its establishment of crucial principles regarding the Tax Court’s status as a specialist tribunal rather than a court of law, the High Court’s inherent jurisdiction to hear tax matters involving legal questions and the rescindability of filed tax statements. The *Metcash* judgment catalysed significant legislative developments, ultimately influencing the drafting of the Tax Administration Act which codified criteria for suspending payment obligations. This judicial–legislative dialogue exemplifies how constitutional scrutiny, even when upholding contested provisions, can lead to the refinement of administrative powers to better protect individual rights while preserving essential state functions. The case thus stands as a cornerstone in South African tax administration, demonstrating how constitutional principles can shape even technical areas of law to reflect a balance between state necessity and individual protection.

*NUMSA v Marley Pipe Systems* concerned the complex intersection of strike action, violence and collective liability. This key case addresses the controversial application of the common purpose doctrine in employment contexts, particularly during industrial action. The Constitutional Court’s ruling significantly altered the legal landscape by establishing that mere presence during violent strike incidents is insufficient for culpability; instead, individual complicity must be conclusively

established. This principle, emerging in the aftermath of the Marikana tragedy that fundamentally reshaped South Africa's approach to strike violence, provides critical protection for workers' constitutional rights to strike and assemble while simultaneously condemning violence in industrial actions. The court's nuanced approach recognises the delicate balance required between employers' legitimate concerns about violent conduct and workers' rights to collective action, establishing a higher evidentiary threshold for dismissals during strikes. The subsequent *Solidarity* case further extended this principle to all designated groups, demonstrating its far-reaching implications across all demographic categories. By establishing a framework that balances transformation with individual rights, the case provides crucial guidance for navigating one of the most challenging aspects of South Africa's constitutional democracy: addressing historical injustices while building a non-racial, non-sexist society founded on human dignity, equality and freedom. The judgment's significance lies in its recognition that while collective action is constitutionally protected, it cannot serve as a shield for individual accountability, thus reflecting a mature approach to labour relations that respects both workplace discipline and legitimate protest – a cornerstone of South Africa's evolving democratic landscape.

In the cases of *S v Lawrence*; *S v Negal*; *S v Solberg* the foundational question of whether legislation that endorses the majority religion constitutes an infringement of religious freedom. This case was the first time that the Constitutional Court examined the right to freedom of religion under section 14 of the Interim Constitution, setting a crucial precedent for interpreting religious freedom in a religiously diverse society. While the majority judgment found no infringement of religious freedom in the Sunday trading provisions, the dissenting judgments by O'Regan J and Sachs J laid down more progressive principles regarding the state's obligation to remain neutral in religious matters and not favour one religion over others. These minority judgments proved influential in subsequent jurisprudence, as evidenced in *Gold Circle (Pty) Ltd v Premier, Province of KZN*, where similar Christian-favouring provisions were declared unconstitutional and in legislative developments

## Introduction

like the repeal of the contested provisions in the new Liquor Act. The case articulated the essential principle that freedom of religion requires the legislature to act with fairness and even-handedness towards diverse religions, recognising that even subtle legislative preferences for a majority religion may constitute an infringement of constitutional rights. The legacy of *Lawrence* extends far beyond its immediate context, forming part of the bedrock of South Africa's approach to religious freedom and equality in a diverse society, thus making it a landmark case worthy of inclusion in this volume documenting the transformative impact of constitutional jurisprudence on South African law and society.

*Fraser v Children's Court, Pretoria North* profoundly transformed the recognition of parental responsibilities and rights of unmarried fathers in South African law. Prior to this groundbreaking judgment, unmarried fathers were systematically excluded from having any meaningful say in the adoption of their children, reflecting deeply entrenched gender inequalities in family law. The Constitutional Court's declaration that section 18(4)(d) of the Child Care Act was unconstitutional marked a watershed moment in addressing discrimination on multiple grounds: between fathers in different types of unions, gender discrimination between mothers and fathers and discrimination based on marital status. The court's nuanced approach balanced the unique relationship between mother and child with the evolving societal context where more fathers sought active involvement in their children's lives. This judgment catalysed significant legislative reforms, first through the Natural Fathers of Children Born Out of Wedlock Act and ultimately section 21 of the Children's Act, which established criteria for unmarried fathers to automatically acquire parental responsibilities and rights. Beyond its immediate impact on family law, the case influenced broader constitutional jurisprudence regarding religious marriages, as evidenced by its citation in subsequent landmark judgments like *Women's Legal Centre Trust v President of the Republic of South Africa*. The court's forward-thinking approach anticipated developments in South African law nearly three decades ahead, demonstrating its enduring significance in advancing equality, challenging

gender stereotypes and recognising different family formations within a constitutional framework that prioritises dignity and equal treatment. Despite shortcomings in subsequent legislation regarding children's best interests, the judgment remains foundational in South Africa's progressive realisation of substantive equality in family law.

*Hassam v Jacobs* concerns equality, dignity and religious freedom. This judgment fundamentally transformed the legal landscape for Muslim women in polygynous marriages by addressing discriminatory exclusions from intestate succession benefits. The Constitutional Court's decisive rejection of historical prejudices against Muslim marriages, previously dismissed as "retrograde" and "immoral", marked a key shift in legal attitudes towards religious diversity. By declaring that discrimination based on religion, gender and marital status reinforced patriarchal practices and violated constitutional guarantees of equality, the court established crucial precedent for the protection of vulnerable groups within South African society. The judgment's significance extends beyond its immediate impact on intestate succession rights to represent a critical step in South Africa's evolution towards legal pluralism and the recognition of diverse family forms. Though focused specifically on intestate succession rather than fully recognising polygynous Muslim marriages, *Hassam* established an important foundation that contributed to subsequent judicial and legislative developments, including the *Women's Legal Centre Trust* case and ultimately the Divorce Amendment Act of 2024. This incremental judicial recognition, while criticised for its piecemeal approach, demonstrates the court's commitment to transformative constitutionalism and reflects South Africa's societal values of human dignity, equality and social justice. The *Hassam* judgment thus stands as a cornerstone in South Africa's progressive accommodation of religious and cultural diversity within a constitutional democracy, making it an essential landmark case that significantly changed South Africa's legal landscape.

*AfriForum v University of the Free State* stands as the first Constitutional Court case to address the complex

## Introduction

tension between official language recognition and practical implementation in South African higher education. This judgment profoundly impacted language policies across universities by establishing that while section 29(2) of the Constitution guarantees the right to education in an official language of choice where “reasonably practicable”, this right must be balanced against considerations of equity, practicability and historical redress. The court’s ruling that language policies entrenching racial segregation, even unintentionally, could not be sustained set a precedent that influenced subsequent decisions including *Gelyke Kanse v Chairperson of the Senate of the University of Stellenbosch* and *Chairperson of the Council of UNISA v AfriForum NPC*. Justice Froneman’s dissenting opinion, which questioned whether exercising a constitutionally protected language right could constitute unfair racial discrimination and emphasised implications for all official languages beyond Afrikaans, proved particularly significant as it ultimately shaped the more nuanced approach taken in the *UNISA* case. The chapter critically evaluates the majority judgment’s narrow interpretation of language diversity and failure to consider relevant legislation such as the Use of Official Languages Act, which requires national entities to use at least three official languages. This case thus represents a key moment in South Africa’s ongoing negotiation between constitutional commitments to multilingualism and the practical challenges of implementation in a post-apartheid society still grappling with historical inequities, making it essential to understanding the evolution of language rights jurisprudence in South African constitutional law.

*South African Police Service v Solidarity obo Barnard* fundamentally shaped South Africa’s jurisprudence on affirmative action. The Constitutional Court grappled with the tension between individual rights and broader societal transformation, establishing what became known as the “*Barnard* principle” which permits employers to deny appointments that would negatively impact representivity even to candidates scoring highest in selection processes. The judgment’s significance lies in its articulation of a nuanced approach to evaluating affirmative action measures, establishing

that while such measures are integral to achieving substantive equality, their implementation must be rationally connected to their purpose. The considerable judicial disagreement evident in the various judgments – with some justices advocating for fairness or proportionality tests rather than mere rationality – reflects broader societal debates about balancing competing constitutional imperatives. The subsequent *Solidarity* case extended the “*Barnard* principle” to all designated groups, demonstrating its far-reaching implications for employment equity implementation across all demographic categories. Beyond its immediate impact on labour law, the *Barnard* judgment’s significance lies in its recognition that restitutionary measures are not exceptions to equality but form part of substantive equality itself, while simultaneously acknowledging the importance of human dignity and reasoned decision-making in their implementation. By establishing a framework for evaluating affirmative action measures that balances transformation with individual rights, the case provides crucial guidance for navigating one of the most challenging aspects of South Africa’s constitutional democracy: redressing historical injustices while building a non-racial, non-sexist society founded on human dignity, equality and freedom.

The *New Nation Movement NPC v President of the Republic of South Africa* case represents a watershed moment in South African constitutional jurisprudence for its profound impact on the country’s electoral system and democratic landscape. This landmark ruling compelled Parliament to amend the Electoral Act to accommodate independent candidates in national and provincial elections, marking a significant departure from the party-centric system that had characterised South African democracy since 1994. At its core, the judgment hinged on a novel interpretation of section 19(3)(b) of the Constitution, which guarantees every adult citizen the right to stand for public office, reading this in harmony with section 18’s protection of freedom of association. The court’s finding that forcing citizens to join political parties to contest elections infringed on these fundamental rights has reverberated throughout South African society, establishing a more inclusive democratic framework that accommodates diverse forms of political participation.

## Introduction

While rejecting arguments that constitutional provisions such as those referring to a “multi-party system” necessitated a party-only electoral system, the court’s balanced approach acknowledged both the importance of political parties and individuals’ rights to disassociate from them. The subsequent implementation of electoral reforms and the emergence of case law addressing challenges in this new electoral landscape demonstrate the judgment’s lasting significance. Though the practical impact of independent candidates in the 2024 elections was relatively modest, the case’s constitutional importance extends beyond immediate electoral outcomes, representing a profound reinterpretation of political rights that may reshape South Africa’s democratic landscape for generations to come by expanding political representation beyond traditional party structures.

The second volume of *Landmark Constitutional Cases that Changed South Africa* builds upon the foundation established by its predecessor, expanding the analytical framework whilst exploring new dimensions of constitutional jurisprudence that complement the groundbreaking cases examined in the first volume. Where the first volume addressed fundamental issues such as the death penalty, constitutional damages, legality review, customary law inheritance and contractual fairness, the second volume delves into equally significant but different constitutional territories including children’s rights, state accountability, tax administration, religious freedom and electoral reform. Together, these volumes offer a comprehensive portrait of how the Constitutional Court has methodically constructed a constitutional edifice that addresses virtually every aspect of South African life, creating an intricate tapestry of judgments that collectively advance the Constitution’s transformative aims whilst preserving its core values of human dignity, equality and freedom.

The progression from the first to second volume reflects the natural evolution of constitutional jurisprudence, moving from the court’s initial task of establishing fundamental principles towards the more nuanced work of applying these principles to increasingly specific and complex factual matrices.

This progression mirrors the development of South African democracy itself, from the urgent dismantling of apartheid's most egregious legal structures to the more gradual refinement of constitutional norms in areas like religious accommodation, affirmative action implementation and language rights in educational settings. By examining these later judgments in detail, the second volume illuminates how the foundational concepts articulated in early cases have been tested, expanded and occasionally reformulated as the Constitutional Court has confronted new challenges. Furthermore, the analytical approach adopted throughout both volumes – examining not only the judgments themselves but also their subsequent impact and development – provides readers with a dynamic understanding of constitutional law as a living system rather than a static collection of precedents, revealing how landmark cases continue to shape South African law long after they are decided.

*Marius van Staden & Roxan Laubscher*

August 2025